IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WA.No. 595 of 2006

AGAINST THE JUDGEMENT IN WPC.29131/2005 Dated 27/01/2006
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APPELLANT: PETITIONER

VIVEK.S.A,
NIRANJANAM, HOUSE NO.121, JAWAHAR NAGAR,
PATTATHANAM.P.O, KOLLAM-691 021.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: RESPONDENTS
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1. THE KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE DIRECTOR,
VOCATIONAL HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM.

4. SRI.SHAJAHAN,
MERCHANDISING DEPARTMENT,
LEELA INTERNATIONAL LTD.,
A-5, KINFRA INTERNATIONAL, APPAREL PARKS,
ST.XAVIER'S COLLEGE.P.O,
THUMBA, THIRUVANANTHAPURAM-695586.

5. SMT.GAYATHRI,
W/O.BABU PRAKASH,
KALLUVILA VEEDU, NJALIYODE.P.O,
KUNDARA, KOLLAM DISTRICT.

6. SRI.GEO JOSEPH,
PALAKKATT HOUSE, VAZHAKULAM.P.O,
THODUPUZHA, IDUKKI DISTRICT.

R6 BY ADV. SRI.GEORGE KURUVILLA(ALAPPUZHA)
R1 BY ADV. SRI.ALEXANDER THOMAS SC,PSC
R2 BY GOVT PLEADER SRI BENNY GERVACIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 03/10/2007, THE COURT ON 09/10/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M. SASIDHARAN NAMBIAR, JJ.

Writ Appeal No 595 of 2006

Dated: 9th October 2007

JUDGMENT

Radhakrishnan, J.

Writ petition was preferred by the appellant herein seeking a declaration that Rule 5 of the Rules for the Kerala Vocational Higher Secondary State Service 2004 prescribing 23 years as the minimum age limit for appointment to the post of Vocational Teacher is illegal and unconstitutional and also for other consequential reliefs.

2. Kerala Public Service Commission published a notification inviting applications for the post of Vocational teacher in Textile Technology (Textile Weaving and Textile Dying and (Printing). Petitioner also preferred an application pursuant to the above mentioned notification. However, his application was rejected by the Public Service Commission by its order dated 25.07.2005 on the ground that the petitioner did not satisfy the 23 years of age prescribed in the Special Rules and the notification, as on 1.1.2004. Aggrieved by the same petitioner has approached this court. Learned single judge found no infirmity in the Rule and dismissed the writ

petition against which this appeal has been preferred.

3. Government of Kerala in consultation with the Kerala Public Service Commission framed Special Rules for the Kerala Vocational Higher Secondary Education Subordinate Service and Kerala Vocational Higher Secondary Education State Service 2004. The posts of Vocational Teacher and Non Vocational Teacher are included in the Kerala Vocational Higher Educational Service. Age limit prescribed for the above two posts is that "no person shall be eligible for appointment by direct recruitment if he has not completed 23 years of age and has completed 39 years on the first day of January in which the applications for appointment are invited.

4. Counsel for the petitioner submitted that fixation of age limit is arbitrary and unwarranted and there is no justification in not entertaining the application of the petitioner. Counter affidavit has been filed on behalf of the second respondent in the appeal stating that educational qualifications for each post are prescribed on the basis of job requirements and the age qualification for the posts were also fixed after assessing the duration of each course included in the rules and the period of time required for the successful completion of the courses. Lower limit of age for a post is fixed to the minimum age of the candidate in completed years for acquiring the required qualifications in the education system. It is stated that the

qualification prescribed for the post in Vocational Higher Secondary Education should be one acquired after a regular course of studies from a recognised University in Kerala. It is stated that the Government have fixed the lower age limit of 23 years for appointment to the post of Vocational Teacher after considering the facts and doing full justice to those who have acquired the qualification. Rule 5 of the Kerala Vocational Higher Secondary Education State Service Rules 2004 is extracted hereunder for easy reference.

> 5. Age Limit. - No person shall be eligible for appointment by direct recruitment to the categories shown in column (1) of the table below if he has not completed the minimum age shown in column (2) or if has completed the maximum age shown in column (3) on the first day of January of the year in which the application for appointment are invited. Usual relaxation in upper age limit shall be allowed to candidates belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Classed.

TABLE

Category	***Minimum Age***	***Maximum Age***
Deputy Director	42 years	50 years
Assistant Director	32 years	50 years
Technical Director	25 years	50 years
Research Assistant/Placement Officer	25 years	50 years
Vocational Teacher	23 years	39 years
Non-Vocational Teacher	23 years	39 years

The above rule would indicate that for the posts of Vocational Teacher and Non-Vocational Teacher minimum age prescribed is 23. A person who applies for the posts will have to attain the age of 23 years as on 1.1.2007 in which year applications for appointment to such posts are invited. Date for eligibility is dealt with in Rule 2 of the Public Services (Date for Determination of Age for Eligibility for Appointment) Rules, 1977. Rule 2 of the said Rules is extracted below for easy reference.

> 2. *Date for determination of age for eligibility for appointment to Public Services*. - With effect on and from the commencement of these rules, the Special Rules for the various State Services and Subordinate Services, in force at such commencement, shall stand modified as if the date specified in those Special Rules for determination of the age for eligibility for appointment to posts included in the various services had been modified as the 1st January of the year in which applications for appointment to such posts are invited.
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> Provided that nothing in this rule shall apply to any appointment to be made in pursuance of any notification inviting applications, published before the commencement of these rules.

When we read Rule 5 of the Kerala Vocational Higher Secondary Education State Service Rules 2004 along with Rule 2 of the Public Services (Date for Determination of Age for Eligibility for Appointment) Rules 1977 it is clear that the age limit fixed for the posts mentioned in the notification is as on 1st January of the year in which applications for appointment to the posts are invited. Rule 2 of the Public Services (Date for Determination of Age for

Eligibility for Appointment) Rules is not in conformity with Rule 5 of the Special Rules has not been challenged. Rule making authority is conferred with the power to fix the age limit as well as the qualification. Special Rules, 1977 specifically state that no person shall be eligible for appointment to public service if he has not completed the minimum age or if has completed the maximum age as on the first day of January in which applications for appointment to the posts were invited. Admittedly petitioner had not completed the age of 23 years as on 1.1.2004. He completed 23 years on 10.06.2004. Since the petitioner had not completed 23 years of age as on 1st January of the year in which applications for appointment to the posts are invited, he was not eligible to apply for the post. In such circumstances, we find no error in the Public Service Commission rejecting the application. Appeal therefore lacks merits and the same is dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
M. SASIDHARAN NAMBIAR
Judge

09/10/2007
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